

Order

Entered: September 24, 2002

2002-22

Proposed Amendment of Rule 3.206
of the Michigan Court Rules

**Michigan Supreme Court
Lansing, Michigan**

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

On order of the Court, this is to advise that the Court is considering an amendment of Rule 3.206 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal. The Court welcomes the views of all who wish to address the proposal or who wish to suggest alternatives. The Court specifically invites comment regarding the source of its authority to provide for attorney fees in domestic relations cases. See, *e.g.*, MCL 600.2401, 600.2405, and 552.13. Before adoption or rejection, this proposal will be considered at a public hearing by the Court. Notice of future public hearings will be provided by the Court and posted at www.courts.michigan.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[The present language would be amended as indicated below.]

RULE 3.206 PLEADING

(A) - (B) [Unchanged.]

(C) Attorney fees and expenses

- (1) A party may, at any time, request that the court order the other party to pay all or part of the fees and expenses related to the action or a specific proceeding, including a post-judgment proceeding.
- (2) A party who requests attorney fees and expenses must allege facts sufficient to show that:
 - (a) the party is unable to bear the expense of the action, and the other party is able to pay, or

- (b) the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply.

Staff Comment: The proposed amendment of MCR 3.206(C) has been suggested by the Michigan Judges Association to: (1) reduce the number of hearings that occur because of a litigant's vindictive or wrongful behavior; (2) shift the costs associated with wrongful conduct to the party engaging in the improper behavior; (3) remove the ability of a vindictive litigant to apply financial pressure to the opposing party; (4) create a financial incentive for attorneys to accept a wronged party as a client; and (5) foster respect for court orders. The Court specifically is inviting comment regarding the source of its authority to provide for attorney fees in domestic relations cases.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on this proposal may be sent to the Supreme Court Clerk in writing or electronically by January 1, 2003, Clerk's Office, Michigan Supreme Court, P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to File No. 2002-22. Your comments and those of others will be posted at www.courts.michigan.gov/supremecourt.